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Paper No. 31

COPY MAILED

AUG 15 2008

In re Application of	:	
Burts	:	
Application No. 09/296,217	:	ON PETITION
Filed: April 22, 1999	:	
Attorney Docket No. 23267/15D1	:	

This is a decision on the petition under 37 CFR 1.181, filed December 10, 2007, requesting that the Office withdraw the holding of abandonment of the above-identified application.

The petition under 37 CFR 1.181 is **GRANTED**.

This application was held abandoned for failure to respond in a timely manner to the Notice of Non-compliant Amendment, mailed October 7, 2003, which set forth an extendable 1 month or 30 day period (whichever was longer) for reply. The Office contended that this application became abandoned on November 8, 2003 for failure to reply. A Notice of Abandonment was mailed on July 16, 2004.

Petitioner asserts a reply was timely transmitted via facsimile to the Office on November 7, 2003. The Office has no record of receiving a reply. However, the copy of the facsimile reply re-submitted with the instant petition contains a proper certificate of facsimile transmission citing a November 7, 2003 date of transmission. The correspondence listed on the first page of the facsimile is "RESPONSE TO NOTIFICATION OF NON-COMPLIANCE WITH THE REQUIREMENTS OF 37 CFR 1.192(C)."

Under 37 CFR 1.8(b), correspondence is considered timely filed if petitioner: supplies (1) a copy of the previously transmitted correspondence with a signed certificate of transmission affixed thereto (2) a statement which attests on a personal knowledge basis to the previous timely transmission. A copy of the sending unit's report confirming transmission may be used to support this statement. Furthermore, under 37 CFR 1.8(c), the Office may require additional evidence to determine if the correspondence was timely filed.

Petitioner has complied with the above-listed requirements and has submitted a copy of the sending unit's report confirming transmission and a copy of the Office generated Auto-Reply Facsimile Transmission that shows that Office received a 5 page facsimile transmission from the

Fax Sender at 7136674424. The Received Cover Page is identical to the first page of the copy of the November 3, 2003 facsimile re-submitted with the petition.

Petitioner has supplied persuasive evidence of facsimile transmission on November 7, 2003 of the reply to the October 7, 2003 Notice.

The petition under 37 CFR 1.181 is **granted** and the holding of abandonment is withdrawn.

After the mailing of this decision, the application file will be returned to Technology Center AU 1743 for consideration of the amendment/remarks filed on certificate of facsimile transmission date November 7, 2003 and resubmitted with the present petition.

Telephone inquiries pertaining to this matter may be directed to the undersigned at (571) 272-3230.



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